

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

50974

FILE: B-183682

DATE: August 13, 1975

MATTER OF: Ingersoll-Rand Company

97492

## DIGEST:

Contracting officer's determination that use of words "DOES NOT APPLY" in unit price and amount columns for technical data under IFB created doubt as to whether data would be supplied at no charge or whether it would not be supplied at all was reasonable, and therefore, bid properly was rejected as nonresponsive.

On December 12, 1974, the Defense Supply Agency, Defense Construction Supply Center, (DCSC), issued invitation for bids (IFB) No. DSA700-75-B-1340, to supply items consisting of four types of products and services as follows:

Item 0001	two air compressors
Item 0002	subsequently deleted from the solicitation by Amendment No. 3
Items 0003 through 0009	data for the two air compressors
Item 0010	on-site technical assistance to install the two air compressors

Two bids were received and opened on February 21, 1975. Ingersoll-Rand was the low bidder and Worthington Compressors, Incorporated (Worthington), was the second low bidder.

By telegram dated February 24, 1975, addressed to the contracting officer, Worthington protested any award to Ingersoll-Rand on the ground that Ingersoll-Rand's bid was nonresponsive for the data items. Ingersoll-Rand had inserted the words "DOES NOT APPLY" in the space for the unit price and amount for data items 0003 through 0009. Since these data items were required,

the Ingersoll-Rand bid was determined to be nonresponsive and the bidder was so advised on April 14, 1975, by letter from the contracting officer. On that date Worthington received award of the contract.

The contracting officer concluded that the Ingersoll-Rand bid was ambiguous and should be rejected because the insertion of the words "DOES NOT APPLY" in the unit price and amount columns gave rise to two possible interpretations: either the bidder did not intend to furnish the data, or the price did not apply. In this connection, the contracting officer notes that the instructions on page 8 of the solicitation immediately after the data items clearly gave notice to all bidders that "\* \* \* inclusion of language which creates a doubt whether data will be supplied will render bids nonresponsive." Furthermore, it is pointed out that this same provision included language to the effect that each line item must be priced or no charge indicated and also referred to clause D05, which provides, in effect, that where no price is stated the Government will consider the price for data included in the price of the end item. In these circumstances, the contracting officer concluded that the doubt having been created by Ingersoll-Rand's imprecision in completing the solicitation form, the bid was rendered nonresponsive by the terms of the solicitation itself.

Ingersoll-Rand asserts that the contracting officer improperly interpreted its use of the words "DOES NOT APPLY" and requests that DCSC be prevented from procuring any of the solicited material from Worthington and be compelled to cancel the contract and make the award to it. Ingersoll-Rand states the position that no particular terminology is required to indicate that technical data is to be furnished at no charge. It is argued that when an invitation prescribes the use of specified terminology or symbols to indicate an intent to furnish items at no charge, the intent and purpose of such provision can be extended no further than to require bidders either to submit a bid price on such items or otherwise clearly indicate that no charge is intended. It is contended, therefore, that the contracting officer's decision, being based upon a literal application of the instructions on page 8, is too narrow and the words used were in fact sufficient to convey the protester's intent to make no charge for the data. In addition, the protester questions whether the contracting officer in fact had doubt as to the intended meaning of the words used, pointing out that although bids were opened on February 21, it was not until Worthington's protest on February 24 that he raised any question.

It is also argued that the contracting officer could not have reasonably questioned Ingersoll-Rand's intent since he is aware that it is a well known practice in the industry not to separately price data and, therefore, he fully expected not to find a price as was the case.

In a case cited by the protester, this Office stated that the clear manifestation by a bidder to provide items at no charge is the keystone to bid responsiveness, rather than the particular language utilized. 48 Comp. Gen. 757 (1969). The opinion set forth at page 762 two guidelines for evaluating an allegedly non-conforming indication of no charge:

"\* \* \* First, the bidder was aware of the necessity to insert something next to the item; in other words, the bidder had not overlooked the item. Second, after considering the matter, the bidder decided not to insert a price for the item. The affirmative corollary is that the bidder obligated itself to furnish the data without cost to the Government. Therefore, where there is no explicit indication that the data was to be supplied at no cost, the bidder's intent to do so was clear and the failure to state this intent in a more positive fashion did not render the bid nonresponsive \* \* \*."


In that case, we concluded that while the entry of "\_\_\_" was a less clear indication of intent than a price entry or statement of "No Charge," it was a more meaningful expression of intent than a mere blank space.

However, as noted in that case, in circumstances where each of two possible meanings can be reached from the terms of a bid, the bidder should not be allowed to explain his meaning when he is in a position thereby to prejudice other bidders or to affect the responsiveness of his bid. Such action would serve to undermine the integrity of the bidding system and cause overall harm to the system of competitive bidding despite the immediate advantage gained by a lower price in the particular procurement. 40 Comp. Gen. 393, 397 (1961). In the instant case, the contracting officer concluded that in view of the explicit instructions immediately above the data items as to the method of indicating "no charge," and in view of the warning as to the effect of inclusion of language of a doubtful meaning, the words "DOES NOT APPLY" could reasonably have two meanings. Although this determination may not have been

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made until three days after bid opening when the question was raised by another bidder, we do not ascribe any particular significance to this circumstance and do not believe it affects the validity of the determination. Moreover, while it may well be the practice of industry, of which the contracting officer is aware, to not separately price data, the contracting officer must determine the responsiveness of bids as completed by the bidder.

For the reasons stated, it is our view that the contracting officer reasonably determined that Ingersoll-Rand's bid raised substantial doubt as to its intention of providing the technical data and hence was nonresponsive. Ingersoll-Rand's protest is therefore denied.

  
Deputy Comptroller General  
of the United States